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DEPARTMENT OF JUSTICE
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July 19, 2019

VIA ECF

The Hon. Michael J. McShane
United States District Court
Wayne L. Morse United States Courthouse
Room 5700
405 East Eighth Avenue
Eugene, OR 97401-2706

Re: Additional Ninth Circuit Authority,
State of Oregon, et al. v. Donald J. Trump, et al., 6:18-cv-01959-MC (D. Or.)

Dear Judge McShane:

I write in response to Defendants' July 18, 2019 letter to you regarding recent authority from the U.S. Court of Appeals for the Ninth Circuit — *City of Los Angeles v. Barr*, Case No. 18-55599.

Contrary to Defendants' suggestion, this recent Ninth Circuit case can be distinguished from the case before the Court. First and foremost, the grant program at issue in *LA v. Barr* was a competitive grant program that by its nature reflected a broad delegation of discretion by Congress to the US Department of Justice that gave the USDOJ broad authority to determine rules/conditions governing that program. In contrast, in this case we confront a mandatory formula grant that provided the USDOJ with little to no discretion with respect to the grant awards.

In addition, the Tenth Amendment question presented in *LA v. Barr* contrasts with our case. In *LA v. Barr*, no federal law instructed the state that it could not pass certain laws. Significantly, the Ninth Circuit does not even discuss *Murphy v. Nat'l Collegiate Athletic Ass'n*, 138 S. Ct. 1461 (2018) because the case did not apply. In our case, by contrast, *Murphy* controls the application of the Tenth Amendment. We look forward to discussing this case with you at oral argument.

Respectfully,

s/ Marc Abrams

Marc Abrams
Assistant Attorney-in-Charge